

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3158 of 1995

with

SPECIAL CIVIL APPLICATION No 5263 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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RAMESH MEGHJI JAROJA

Versus

CHAIRMAN GUJ ELE. BOARD AND 1

Appearance:

1. Special Civil Application No. 3158 of 1995
MR BY MANKAD for Petitioner
MR MD PANDYA for Respondent No. 1
SERVED for Respondent No. 2
 2. Special Civil Application No 5263 of 1995
MR BY MANKAD for Petitioner
MR MD PANDYA for Respondent No. 1
SERVED for Respondent No. 2
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CORAM : MISS JUSTICE R.M.DOSHIT

ORAL JUDGEMENT

Both these petitions arise out of a claim made by the respective petitioners for compassionate employment in the respondent Board.

2. Fathers of both the petitioners were serving in the respondent Board and expired while in service. The Board, under its General Standing Order No. 295 has framed a policy to offer employment to one of the dependents of the employee who dies during service in the Board on compassionate grounds. The said General Standing Order, however, provides that such benefit would not be available in cases where one or more members of the family of the deceased employee is/are already employed within or outside the Board. In the present case, it is not disputed that the brothers of both the petitioners are employed in the Board. Thus, in view of the above referred provisions, the petitioners are not entitled to compassionate employment in the Board and their claims have been accordingly rejected.

3. Feeling aggrieved, the petitioners have preferred these petitions. Learned advocate Mr. Mankad appearing for the petitioners has contended that the brothers of both these petitioners though are employed in the Board, they have been residing separate from rest of the family members for several years i.e. since prior to the death of their fathers. Said brothers, therefore, cannot be said to be members of their families and the benefit of compassionate employment otherwise available to the concerned petitioners cannot be denied on such grounds. In support of his contention, he has relied upon the judgment of this Court in the matter of Sabrabibi Usmankhan Pathan v. Superintending Engineer, Gujarat Electricity Board and others [1994 (2) GLR 1067], and in the matter of Bhagwanji Monabhai Khatana vs. State of Gujarat and others [1995(2) GCD 862] and in the matter of Nisar Ahmad Abdulmiya vs. State of Gujarat and others [1996(2) GLR 453].

4. In the matter of Sabrabibi Usmankhan Pathan [supra], petitioner was found to be eligible for compassionate employment. However, she was not offered such employment on account of want of vacancy. Considering the facts, the Court directed that the petitioner be offered employment forthwith and be paid monthly allowance of Rs.500/- till the petitioner was offered appointment. In the present case, the petitioner

has not been found to be eligible for compassionate employment and the principles laid down in the aforesaid judgment would not apply to the facts of the case. In the matter of Bhagwanji Monabhai Khatana [supra], the petitioner was denied compassionate employment on the ground that the total income of his family exceeded upper limit provided in the Government policy for compassionate employment. The Court held that the income of one of the brothers of the petitioner who was residing separate from the rest of the family and was gainfully employed could not have been clubbed with the income of the rest of the family for the purpose of computing income of the family under the Government policy. The question in the present petitions is not that of the income of the family. In the policy framed by the Board, compassionate employment cannot be offered to a dependent of the deceased employee in cases where one or more members of the family of the deceased employee is/are already employed. In my view, therefore, the principles laid down in the above referred judgment would not be applicable on the facts of the present case. In the matter of Nisar Ahmad [supra], the Court has emphasized the need for offer of appointment on compassionate grounds without delay. In the present case, since the petitioners are not found to be eligible for compassionate employment, above referred judgment would have no applicability.

5. Learned advocate Mr. Mankad appearing for the petitioners has contended that since the brothers of the petitioners were residing separate from the rest of the family, they cannot be said to be members of their respective family and no exception can be made out in grant of petitioners claim for compassionate employment. The contention cannot be accepted. A person does not cease to be a member of the family merely because he has a separate residence. Besides, very issue has been considered and decided by this Court in the matter of Ghanshyambhai Dayalbhai Dabhi vs. State of Gujarat and others [Special Civil Application No. 1181 of 1994] on 24th March, 1995. In view of the said judgment also, the contention raised by Mr. Mankad requires to be rejected. At last, Mr. Mankad has submitted that certain other persons have been offered employment on compassionate grounds even though their brothers have been employed either within or out side the Board. In answer to the said contention, learned advocate Mr. Pandya appearing for the Board has produced a copy of the order dated 2nd December, 1995 whereunder one Mr. Dipak Parmar who had obtained compassionate employment by suppressing the factum of his brother having been employed in the Board has been dismissed from service. Mr. Pandya has also

produced communication dated 29th May, 1995 received from the Food Corporation of India informing the Board that no person in the name of Vinod Maheshwari was employed by the Food Corporation of India.

6. In view of the above discussion, both these petitions fail. Petitions are dismissed. Rule in both the petitions stand discharged. There shall be no order as to costs.

18.6.1997. *****

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